IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3074 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAMAR RAMJIBHAI KHIMABHAI

Versus

MIRZA NURMAHMMADBHAI AMIRBHAI & ANOTHER

Appearance:

MR SANJAY M AMIN for Petitioner

MR PS CHAMPANERI for Respondent No. 1

MR MA BUKHARI AGP for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 24/03/2000

ORAL JUDGEMENT

This petition is filed for quashing and setting aside an order passed by the Deputy Collector, Wadhawan City Division, Surendranagar on November 13, 1997 in an application bearing Electricity Case No. 6 of 1997 and

confirmed by the District Judge, Surendranagar on 24th July, 1998 in Civil Revision Application No.1 of 1998.

2. The case of the petitioner was that he was a tenant of premises which was of the ownership of respondent no.1 herein at a monthly rent of Rs.25/-. It was also his case that a hut was situated on the disputed land and since the petitioner wanted electricity connection, he made an application under Section 23A of the Bombay Rents, Hotels & Lodging House Rates Control Act, 1947 (hereinafter referred to as "the Act"). The said section provides that when a tenant desires supply of an electricity power at his own costs, he has to obtain consent of his landlord. If the consent is not given by the landlord, the section enables a tenant to apply to the Collector in accordance with the scheme and Collector will decide the application in accordance with law.

3. When the petitioner made an application under Section 23A of the Act, a notice was issued by the Deputy Collector to respondent no.1. Respondent no.1 objected to grant of application contending, inter alia, that the petitioner was not his tenant. His case was that only a part of open land was let out to the petitioner, but by taking undue advantage of his absence, the petitioner encroached over other land and also made pucca construction of hut. In other words, the petitioner was never a tenant of the portion of land for which an application for supply of electricity was made but he was a trespasser,and the application was not maintainable. The landlord further contended that as the petitioner was not a tenant, the respondent no.1 was constrained to file a civil suit in the Court of learned Civil Judge (Junior Division), Vadhawan being Civil Suit No.50 of 1989 which was pending. Another Civil Suit No.43 of 1992 was also filed. He, therefore, submitted that no order under Sec.23A could be passed by the Deputy Collector.

4. Upholding contention of the landlord and observing that when civil litigation was pending before the competent civil court and the petitioner was described as trespasser and that point was still to be decided by a competent civil court as to whether the petitioner can be said to be a tenant or not, the Deputy Collected rejected the application.

5. Being aggrieved by the order passed by the Deputy Collector, the petitioner preferred a revision application before District Court which was also dismissed. The District Judge, in the impugned judgment,

observed that by rejecting the application, the Deputy Collector had not committed any error of law and/or jurisdiction. In the opinion of the District Judge, the Deputy Collector could not decide that the applicant was "legal tenant" of the disputed hut. He was, therefore, right in rejecting the application filed by the petitioner. Against that order, the present petition is filed.

6. I have heard Mr. Amin, learned counsel for the petitioner, Mr. Champaneri, learned counsel for the respondent no.1 and Mr. Bukhari, learned Assistant Government Pleader for respondent no.2.

7. Mr. Amin, learned counsel for the petitioner submitted that the Deputy Collector and District Court were wrong in holding that the applicant was not entitled to get electricity and the application filed by the petitioner was liable to be rejected. He submitted that provisions of Section 23A of the Act have not been appreciated in their proper perspective by the Deputy Collector and by the District Court, and there is an error apparent on the face of the record committed by them which requires to be corrected. He also submitted that the District Judge was wrong in law in holding that the revision application filed before the District Court was not maintainable. He, therefore, submitted that both the orders are liable to be quashed and set aside by allowing the present petition.

8. Mr. Champaneri, on the other hand, supported the orders passed by the Deputy Collector and confirmed by the District Judge. He submitted that the District Judge has not held that the revision application was not maintainable, but he was right in taking the view that the scope of revision application under sub-section (3) of Section 29 was very limited and in the facts and circumstances of the case, no case was made out to interfere with the order passed by the Deputy Collector and in that sense, the learned District Judge held that the revision application was not maintainable.

9. On merits, he submitted that the petitioner was a trespasser. The hut was never let to the petitioner. He was a rank trespasser and the respondent no.1 has filed a suit in competent civil court which is pending. Till the question is not decided whether the petitioner is a tenant or not, he cannot make an application for electricity supply. By rejecting such application, neither the Deputy Collector nor the District Judge has committed an error of law or of jurisdiction. On the

contrary, It is in consonance with the provisions of Section 23A of the Act.

11. In the facts and circumstances of the case, in my opinion, the petition deserves to be allowed. It is true that the case of the respondent no.1 was that the petitioner was a trespasser as open land was let to him and he has encorached over other portion of land and constructed hut thereon. At the same time, however, it cannot be disputed that the petitioner was occupying open land. The said fact was not in dispute between the parties. Under the provisions of Section 23A of the Act, what is required to be seen is not whether a person is held to be "tenant" as defined in the Act by a competent rent court. In deciding an application under Section 23A of the Act, the authority has to consider whether the applicant can be prima facie said to be tenant.

12. In this connection, my attention was rightly invited by Mr. Amin, learned counsel for the petitioner to a decision of this court rendered in GHADHVI JITENDRA ISHWARDS vs. B.K.THAKKER & OTHERS, reported in 1994(2) GLR 1053. In that case also, an application under Section 23A was made by the applicant which was objected by the respondent -landlord on the ground that the petitioner was not a tenant of the respondent, but was a trespasser and a suit was pending in competent civil court. Upholding the contention of the landlord, an application was rejected and matter came before this court. Allowing the petition and making the rule absolute, the Division Bench of this court observed thus-

> 8 We, therefore, examine the mertis prima facie. We say "prima facie" because there is civil litigation pending between the parties in the Civil Court and any finding given in this proceeding would be for the limited purpose of Sec.23A and any finding given by the authority while deciding application under Sec.23A would be a finding for the purpose of that proceeding only and would be subject to any decision by a competent Court which would be binding to the parties. However, merely because some dispute is raised or some dispute is pending in Civil Court, it would be no justification for the authority under Sec.23A to reject the application and to refuse to grant permission for new electricity connection. If that were so, the

landlady who does not give consent for a new electricity connection would be tempted to raise a case of simple denial of status of the applicant. On mere denial, the authority under Sec.23A does not become helpless and does not lose the jurisdiction and cannot abdicate his duty under Sec.23A which is meant to give easy and speedy remedy for getting basis and essential amenity.

9 In the present case, it has been prima facie established that the petitioner has been in occupation of the premises since 1988. Till 1992, there is no dispute raised by the landlady and no litigation started by the landlady on the basis that the petition is a trespasser.The petitioner has also stated that he has been paying monthly rent of Rs.325.00 and that the landlady has not been issuing any receipt and he has been claiming to be a tenant and undisputedly he is in possession of the suit premises since 1988. Therefore, prima facie, the petitioner is entitled to permission for electricity connection under Sec.23A of the Act inspite of the lack of consent by the landlady and inspite of her opposition.

In my view, the ratio laid down in Ghadvi Jitendra Ishwardas (supra) applies to the case on hand. It is quite possible that a competent civil court may record a finding regarding status of the petitioner, but it cannot be said that prima facie case cannot be considered by the Deputy Collector or by the District Judge. On the contrary, it is obligatory on the Deputy Collector as well as the District Judge to prima facie consider the case of the petitioner and pass appropriate order in accordance with law in the light of the legislative mandate reflected in Section 23A of the Act. Since it was not done, there is a jurisdictional error on the part of the authorities and the petition deserves to be allowed.

13. It was finally contended that the scope of jurisdiction of this court under Article 227 of the Constitution is very much limited. For that purpose, strong reliance was placed on a decision rendered in MOHD. YUNUS. Vs. MOHD. MUSTAQIM AND OTHERS, AIR 1984 SC 38. It is true that ambit and scope of jurisdiction

of this court under Article 227 of the Constitution is limited as it is supervisory in nature. But as stated hereinabove, the Deputy Collector and the District Judge has committed an error of jurisdiction and the orders passed by them are contrary to law laid down by this court. The petition, therefore, deserves to be allowed.

14. The petition is accordingly allowed. The orders passed by the Deputy Collector and confirmed by the District Judge are hereby quashed and set aside and the application filed by the petitioner is granted. The Gujarat Electricity Board will now proceed further on that basis and take an appropriate action according to law.

15. It may, however, be stated that all the observations made in this judgment are prima facie in nature and it is clarified that rights of the parties will not be affected in civil litigation and observations herein made are without prejudice to the rights and contentions of the parties. As and when the suits will be taken up for hearing, it is open to them to take all contentions. It is also open to the respondent No.1 to request the Civil Court for early disposal of the suit, in view of the statement made by Mr. Champaneri, learned counsel for the respondent no.1 that the respondent no.1 is very old. Rule made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

Date: 24/3/2000. (C.K.THAKKER,J.)
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